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The United States and Russia, Part II

By Vera A. Micheles*

THE establishment of the Soviet Government in 1917 challenged existing political and economic institutions. The Bolshevist theory of world revolution, with the eventual formation of proletarian society as its goal, defied the international *status quo.* Recognition was at first denied the Soviet Government in the hope that other Russian groups, favorable to capitalism and parliamentary institutions, might succeed in displacing it with the aid of western States. The failure of counter-revolution and intervention and the consistent refusal of the Soviet Government to modify its essential features, brought about a reconsideration of policy. The commercial importance of Russia to the world, in terms of markets and raw materials, made intercourse with that country desirable, especially for States dependent on imported foodstuffs. The western States demanded the cessation of propaganda, the payment of debts and the restoration of confiscated property as conditions precedent to recognition. Nevertheless, recognition was accorded by twenty-two States regardless of the fact that the Soviet Government had fulfilled none of these conditions. The United States, geographically detached and economically independent, has found it possible so far to withhold recognition.

Part I of *The United States and Russia* was devoted to a comparative study of the policies followed by the United States and other States with regard to the Soviet Government. Part II will be devoted to an examination of trade relations, the Soviet Government's position before American courts, and the effect, if any, that recognition may be expected to have on intercourse between the two countries in the future.

The Soviet Government has made it a practice to stress the advantages which would accrue to capitalistic States as a result of recognition and normal economic intercourse. In 1922, at the time of the Genoa Conference, Lenin said:

". . . To Genoa we go as traders, not as Com-

*With the aid of the research staff of the Foreign Policy Association, Incorporated.

munists. We need to trade and they need to trade."[1]

The Russian delegation at the conference pointed out that the solution of the Russian problem "would give to the world's industries 140,000,000 of consumers, and an immense quantity of raw materials, and so contribute to the relief of the crisis, the unemployment and the misery created by the World War, the intervention and the blockade." It attempted to draw a distinction between the political and the economic aspects of the situation:

> "The Russian Government sent its representatives to the Conference of Genoa in the hope of achieving an agreement with the other States which, without affecting the social and political system established as a result of the revolution and of the intervention victoriously repulsed, would bring about not an aggravation but an improvement of the economic and financial situation of Russia, and would at the same time pave the way to an amelioration of the economic situation in Europe."[2]

The policy of the Soviet Government was recently summed up as follows:

> "Thus our diplomacy in the course of the five years which followed the death of Vladimir Ilyitch [Lenin] has followed a policy based on systematic demonstration of the expediency for capitalistic States of maintaining and strengthening peaceful relations with the Soviet Union."[3]

THE POLICY OF GREAT BRITAIN

In the absence of express prohibition, intercourse between the citizens of two countries is not interrupted during a period of non-recognition. Great Britain placed no restrictions on trade with Russia prior to recognition.

> ". . . . Everyone knows that, as between country and country, trade has been perfectly free between Russia and England during the last three or four years. There has not been a single regulation or other like difficulty in the way of carrying on international trade between Russia and England."[4]

The British Government, however, was of the opinion that recognition would increase the volume of Anglo-Russian trade. Ramsay MacDonald, referring to the recognition of the Soviet Government, said in the House of Commons on February 12, 1924:

> "But the great regret I have to express is that we have had to wait until February, 1924, to take the first step in a policy which is absolutely essential for the revival of our foreign trade."[5]

THE POLICY OF THE UNITED STATES

The official policy of the American Government concerning trade with Russia was expressed in President Coolidge's message to Congress, December 6, 1923: "Our Government offers no objection to the carrying on of commerce by our citizens with the people of Russia."

The conditions under which commerce is carried on between the citizens of the two countries were outlined by Mr. Kellogg in his statement of April 14, 1928:

> "As concerns commercial relations between the United States and Russia, it is the policy of the Government of the United States to place no obstacles in the way of the development of trade and commerce between the two countries, it being understood that individuals and corporations availing themselves of the opportunity to engage in such trade do so upon their own responsibility and at their own risk.
>
> "The Department of State has endeavored to reduce to a minimum difficulties affecting commercial relations. Visas are readily granted by American consular officers to Russian nationals even if associated with the Soviet régime provided that the real purpose of their visit to the United States is in the interest of trade and commerce and provided that they have not been associated with the international revolutionary activities of the Bolshevist régime."[6]

The following table of official figures indicates that, while exports from the United States to Russia fell off in 1925-26 as compared with exports for 1924-25, they rose considerably in 1926-27 and still further in 1927-28; at present the United States is second only to Germany as regards the value of exports to Russia.

1. Quoted by Gastov, G. in "Lenin—Osnovopolozhnik Nashei Vneshnei Politiki" (Lenin, the Founder of our Foreign Policy). *Izvestia*, Jan. 22, 1929. (Translation ours.)
2. *Papers Relating to the International Economic Conference, Genoa, April-May, 1922*, Cmd. 1667, London, 1922, No. 6.
3. "Vneshnya Politika S. S. S. R. bez Lenina" (The Foreign Policy of the U. S. S. R. without Lenin). *Izvestia*, Jan. 22, 1929. (Translation ours.)
4. Lieut.-Col. Ward, *Parl. Debates*, House of Commons, Vol. 169 (1924), p. 779.
5. *Parl. Debates*, House of Commons, Vol. 169 (1924), p. 762.
6. *Foreign Relations*. Republican National Committee, Bulletin No. 5, 1928.

RUSSIA'S FOREIGN TRADE[7]

	1924-25		1925-26		1926-27		1927-28	
	Imports	*Exports*	*Imports*	*Exports*	*Imports*	*Exports*	*Imports*	*Exports*
Great Britain	185.4	107.8	187.5	125.4	197.5	97.1	147.7	45.4
Germany	87.0	101.6	111.0	172.2	267.3	157.7	185.4	242.0
United States	21.2	199.1	25.1	119.9	17.3	143.4	22.1	181.5

Russia's imports from the United States in 1926-27 consisted largely of raw materials (metal and rubber); semi-fabricates; industrial equipment (chiefly for the petroleum, mining and metal industries and the Dnieper hydroelectic plant); automotive transport (chiefly trucks and parts, automobile parts and aeronautical supplies); and agricultural machinery (chiefly tractors and parts). Exports from Russia to the United States in 1926-27 constituted only 2.6 per cent of the total exports of the country. They consisted chiefly of raw and semi-finished materials; textile fibers; medicinal herbs and chemical products; foodstuffs and minerals.

THE SOVIET GOVERNMENT'S MONOPOLY OF FOREIGN TRADE

The Soviet Government monopolized foreign trade by a decree of April 22, 1918, the material portions of which read as follows:

> "All foreign trade is nationalized. Transactions for the purchase and sale of all products (extractive and manufacturing industries, agriculture, etc.) with foreign States and individual trade undertakings abroad are concluded in the name of the Russian Republic by specially empowered representatives. Except for these representatives, all trade transactions with foreign countries for export and import are prohibited."[8]

The monopoly of foreign trade is exercised on behalf of the State by the People's Commissariat for Foreign and Domestic Trade,[9] which is directly responsible to the State Planning Commission (Gosplan) and the Council for Trade and Defense (Sto). The People's Commissariat for Foreign and Domestic Trade is in direct relation, on the one hand, with all government undertakings, cooperative organizations and joint-stock companies (working with mixed capital, part Russian and part foreign) in Russia, and, on the other hand, with the trade representatives of the Soviet Government abroad. It draws up each year a plan of exports and imports which is subject to ratification by the Council for Labor and Defense in agreement with the State Planning Commission. The export-import plan must be framed in accordance with the condition of industry in the U.S.S.R.[10] The People's Commissariat for Foreign and Domestic Trade must present to the State Planning Commission a quarterly report of the export licenses it has issued to the various undertakings in Russia, and of the import licenses issued by trade representatives abroad. Government enterprises and undertakings may engage in foreign trade, but must submit annual reports regarding their operations to the People's Commissariat for Foreign and Domestic Trade; the latter submits these reports to the State Planning Commission.[11] Cooperative organizations may engage in foreign trade only after consultation with the People's Commissariat for Foreign and Domestic Trade.[12]

The trade representatives form "an integral part of the plenipotentiary representation" of the Soviet Government in each State.[13] By a decree of June 4, 1918, the Soviet Government abolished all diplomatic ranks, providing for only one type of agent —the "plenipotentiary representative." By the consular instructions of April 6, 1921, the Soviet consuls are charged with informatory functions, except as regards purely commercial questions; the latter lie within

7. The figures given are at contemporary prices in millions of rubles, each equal to $0.5146. They are given on the basis of the *Department of Commerce Reports* and of the *Soviet Union Year-Book*, 1928. According to a four-year average for 1911-1914, exports from the United States to Russia amounted to 23.5 millions of dollars, and imports from Russia into the United States amounted to 19.1 millions of dollars. Department of Commerce, *Commerce Yearbook, 1925*, Washington, D. C., p. 129.

8. *Sbornik Deistvouischich Dekretov i Postanovlenii po Vneshnei Torgovle* (Collection of Decrees and Ordinances Regarding Foreign Trade), published by the People's Commissariat for Foreign Trade, Moscow, 1924-1926, 3 vols., Vol. I, p. 11. (Translation ours.)

9. Ordinance of the Presidium of the All-Russian Executive Committee, Mar. 13, 1922, *Ibid.*, p. 11.

10. Ordinance of the Council of People's Commissars, Sept. 18, 1923. *Ibid.*, p. 13.

11. Ordinance of the Council for Labor and Defense, Feb. 15, 1924. *Sbornik Dekretov i Postanovlenii po Vneshei Torgovle*, p. 62.

12. Circular of the People's Commissariat for Foreign Trade, Aug. 22, 1923, to trade representatives abroad. *Ibid.*, p. 69.

13. Ordinance of the All-Russian Executive Committee, Oct. 16, 1922, *Ibid.*, p. 13.

the province of the trade representatives. The "mandates" of the trade agents are signed by the People's Commissariat for Foreign and Domestic Trade and countersigned by the People's Commissariat for Foreign Affairs.[14] By the terms of the trade agreements concluded by the Soviet Government, Soviet trade representatives are accorded diplomatic privileges, usually with the exception of immunity from suit.

The Soviet Government has no trade representatives in the United States. Russo-American trade is carried on through several Soviet agencies: the Amtorg Trading Corporation, which represents the principal trading and industrial organizations of the Soviet Union; Centrosoyus, Incorporated, (the Central Union of Consumers' Cooperatives); Selskosoyus, Incorporated, (the Central Union of Agricultural Producers' Cooperatives); and the All-Russian Textile Syndicate, Incorporated, which purchases cotton for the Soviet Union.[15]

The extent to which the monopoly of foreign trade affects countries engaged in trade with Russia cannot yet be determined. *Le Temps*, in an editorial of November 29, 1928, states that German commerce with Russia has to date been "totally paralyzed by Communist methods and Soviet institutions." The protocol of the Russo-German trade negotiations, December 21, 1928, however, contains the following statement:

> "After careful discussion of mutual trade relations, both parties have reached the conclusion that these relations have been developing normally on the whole, and that occasional complaints and misunderstandings do not represent phenomena characteristic of the development of economic relations between the two countries."[16]

It may be seen that the Soviet Government, through the agency of the People's Commissariat for Foreign and Domestic Trade, may direct foreign trade into the channels which it considers of greatest benefit to the country at any given time. Soviet imports during the past year were determined by the policy of importing primarily producers' goods for the needs of industry, transportation and agriculture. The regulation of industry and the development of the five-year industrialization plan adopted in 1926 are under the direct supervision of the State Planning Commission organized in 1923. Similar control over the development of agriculture may be expected as a result of two measures adopted by the Central Executive Committee of the U.S.S.R. on December 15, 1928. The first of these is a project of law providing for the distribution and utilization of land (nationalized in 1918), with a view to the development of State and "collective"[17] farms and the encouragement of the poor and "middle" peasants (as contrasted with the well-to-do peasants, the *kulaks*). The second is a five-year agrarian plan, corresponding to the five-year industrial plan. It is designed to raise agricultural productivity thirty to thirty-five per cent. According to its terms, the State will extend credits to the poor and "middle" peasants for the purchase of machinery, improved seed and fertilizers, and will conduct an intensive campaign for the dissemination of agricultural information. By these measures the Soviet Government hopes to bridge the existing gap between industrial and agricultural production in Russia; to secure a surplus of grain which may be exported in return for imports of machinery and raw materials; and to place Russia in a position to compete with capitalistic countries on a basis of equality.

On November 19, 1928 M. Stalin, Secretary-General of the Russian Communist party, said:

> "Look at capitalistic countries, and you will see that their technical development is not only marching, but actually running forward, outstripping old forms of industrial technique. And thus it comes about that, on the one hand, we have in our country the most advanced government in the world, the Soviet Government, and, on the other hand, we have an extremely backward industrial technique, representing the basis of socialism and Soviet power. Do you think that it is possible to achieve a definitive victory of socialism while

14. Regulations regarding the appointment of representatives of the R. S. F. S. R. abroad, Jan. 24, 1922. Korovin, E. A. *Mezhdunarodnye Dogovory i Akty Novavo Vremeni* (International Agreements and Acts of the Modern Period), Moscow, 1925, No. 40, Art. 9.

15. The Soviet Union Information Bureau, with offices in Washington, D. C., serves as a clearing house of information, and publishes a monthly review, the *Soviet Union Review*.

16. *Izvestia*, Dec. 25, 1928. (Translation ours.)

17. Land leased to a group of peasants to be cultivated in common.

such a contradiction exists? What must we do in order to eliminate this contradiction? We must overtake and outstrip the advanced technique of developed capitalistic countries. We have overtaken and outstripped leading capitalistic countries in so far as the establishment of a new political order, the Soviet order, is concerned. That is good. But it is not enough. In order to achieve a definitive victory of socialism, we must overtake and outstrip these countries also in the technical-economic sphere. Either we shall succeed in this, or we shall be stamped out. This is true not only from the point of view of the construction of socialism. It is true, too, from the point of view of the protection of our country's independence in capitalistic surroundings. It is impossible to maintain the independence of our country without a sufficient industrial foundation for defense. It is impossible to create such an industrial foundation without advanced technique and industry. These are the conditions which dictate to us a rapid tempo in the development of industry."[18]

Under these conditions it may be expected that the Soviet Government will turn for the purchases necessary to the fulfillment of its plans to the countries best prepared to supply its needs; these are not necessarily countries by which it has been recognized. It must be noted, however, that the reduction in imports from Great Britain in 1926-28 is attributed by Soviet authorities to the break in Anglo-Russian relations which occurred in 1927, and the failure of Russia thereafter to place orders for machinery and other commodities in Great Britain. The Soviet Government claims that Russo-American trade, satisfactory though it is, would be given a further impetus by recognition and the establishment of official relations between the two countries. It argues that recognition would enable it to float loans in the United States and obtain the credits necessary to its foreign trade.

LOANS AND CREDITS

At present the Government of the United States, according to Mr. Kellogg, "views with disfavor the flotation of a loan in the United States or the employment of American credit for the purpose of making an advance to a régime which has repudiated the obligations of Russia to the United States and its citizens and confiscated the property of American citizens in Russia."[19]

The Department of State raised objections in 1926 to the financing of Russo-German trade by means of a German loan which it was proposed to float in this country, on the ground chiefly that "as the Russian debts have not been funded, the government does not feel disposed to extend credits to Russia more than to any other debtor nation which has not met its obligations."[20] In 1928 the Department of State objected to the sale in the United States of the Soviet Government 9 per cent Railway Loan. The inadvisability of permitting the sale of bonds issued by the Soviet Government on the security of railroads which had already been pledged for repudiated Russian obligations is understood to have formed the basis of the objection. The following statement was issued in this connection:

> "The department objects to financial arrangements involving the flotation of a loan in the United States or the employment of credit for the purpose of making an advance to the Soviet régime. In accordance with this policy the department does not view with favor financial arrangements designed to facilitate in any way the sale of Soviet bonds in the United States. The department is confident that the banks and financial institutions will cooperate with the government in carrying out this policy."[21]

It is interesting to note that the British Government has recently declared itself opposed to the granting of credits for trade with Russia. Mr. Hacking, Parliamentary Secretary to the Overseas Trade Department, when submitting the Overseas Trade (Guarantees) bill to the House of Commons on November 19, 1928 stated that the bill was not applicable to Russia. He advanced the following reasons for the attitude of the British Government:

> "It was unwise to stand under a scaffold which was crumbling. . . . Russia today had no ex-

18. *Izvestia*, Nov. 24, 1928. (Translation ours.)

19. Statement of April 14, 1928.

20. *New York Times*, April 11, 1926. Cf. editorial in *Le Temps*, November 29, 1928: ".....It is evident that the Bolsheviks count on obtaining through the intermediary of Germany, in the United States or elsewhere, the second-hand credits which they need in order to maintain themselves in power." Reference is here made to the Russo-German trade negotiations which took place in November-December, 1928.

21. State Department Press Release, Feb. 1, 1928. The department had already notified the Chase National Bank of New York and banks in Chicago and San Francisco which had been named as agents for the payment of interest and retirement charges of its objections to their plans.

portable surplus of grain; her credit was undoubtedly steadily going down, as it must do when she had fewer exports with which to pay for her imports; and her position must obviously grow much worse in the not distant future owing to the failure of her crops in some parts of the country and the complete breakdown of the grain-collecting policy. Few taxpayers would take the risk as individuals of trading with Russia, and it was certainly not the Government's desire to lose the taxpayers' money."[22]

In the course of the debate, members of the Labor party argued that Great Britain needed the Russian market, and claimed that discrimination against Russia was based on political rather than on economic grounds. Answering the argument that the United States was profiting by the absence of close commercial relations between Great Britain and Russia to increase the volume of Russo-American trade, Mr. Hacking said:

"There was no difference between the way that we treated Russia and the manner in which the United States of America treated her. Neither the United States nor Great Britain gave her credit facilities."[23]

LONG-TERM CREDITS

The Department of State does not object to "the financing incidental to ordinary current commercial intercourse between the two countries, and does not object to banking arrangements necessary to finance contracts for the sale of American goods on long-term credits, provided the financing does not involve the sale of securities to the public." On November 26, 1927 the Farquhar Company arranged a six-year credit for $40,000,000 for the purchase by the Soviet Government of machinery for the Makeev steel foundry; it is understood, however, that this deal has since fallen through. On October 9, 1928 the International General Electric Company extended a six-year credit for from $21,000,000 to $26,000,000 for the purchase of electrical machinery in this country. It would appear that credits have been extended whenever the American corporations concerned reached the conclusion that the Soviet Government could be relied upon to execute its engagements on a business basis, apart from political considerations. According to a statement made by Mr. Boothby, Private Parliamentary Secretary to Winston Churchill, Chancellor of the Exchequer, at Peterhead on December 14, 1928, a large amount of credit awaits the Soviet Government in London, provided it gives the necessary guarantees.

It has been asked, in this connection, whether or not a government which has repudiated the debts of preceding governments can be trusted to fulfill the obligations it may contract. The Soviet Government itself has claimed that its action in 1917-18 could not be regarded as a precedent.

"The repudiation of the debts and obligations contracted by the former régime, abhorred as it was by the Russian people, can in no wise indicate in advance the attitude of Soviet Russia, the child of the revolution, towards those who would come with their capital and technical knowledge to help in its reconstruction."[24]

Referring to the increase in Russo-American trade, M. Litvinov, on December 10, 1928, remarked that the Soviet Government had scrupulously fulfilled its financial obligations.

At the present time, in the absence of recognition, American business men engage in trade with Russia at their own risk; they would be unable to receive diplomatic protection from the United States in case of default or breach of contract on the part of the Soviet Government which the United States has not recognized. It must be pointed out, however, that subsequent to recognition diplomatic protection would be extended to them only at the discretion of the Department of State.

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22. *Times* (London), Nov. 20, 1928. This bill is "to extend the periods during which guarantees may respectively be given and remain in force under the Overseas Trade Acts, 1920 to 1926." The trader is guaranteed by the government the agreed proportion of his bills on maturity and also unconditionally any bank overdrafts contracted against these bills for the purpose of finding working capital. At a meeting of British manufacturers held in London on February 5, 1929, it was decided to send a representative delegation to Russia not later than March 8. *Times* (London), February 6, 1929.

23. *Times* (London), Nov. 24, 1928. Compare the statement made by Sir Cunliffe-Lister in the House of Commons on Dec. 18, 1928: "....What is perfectly plain is that there are absolutely no sort of obstacles put in the way of Russia trading with us or our trading with Russia." *Times*, Dec. 18, 1928.

24. Memorandum of the Russian delegation to the Genoa Conference, May 11, 1922. *Papers Relating to the Genoa Conference*, No. 6.

RUSSIAN GOLD

The Soviet Government has also claimed that non-recognition created an obstacle to the unhampered use of gold in the course of commercial transactions between Russia and the United States. In March 1928 the State Bank of the U.S.S.R., established by the Soviet Government in 1921, made a consignment of gold to New York to the value of about $5,000,000. The Treasury refused to admit this gold for assay and transfer to the Federal Reserve Bank. Mr. Mellon, Secretary of the Treasury, made the following statement on March 6, 1928:

> "Since 1920 the Treasury Department has refused to accept at the United States mints and assay offices gold coming from Soviet Russia, the State Department having declined to give assurance that the title to Soviet gold will not be subject to attack internationally or otherwise."

The gold was eventually shipped back to Europe and transferred to the German *Garantie und Kredit Bank.* M. Scheinman, Chairman of the Board of Directors of the State Bank, made the following comment regarding this incident:

> "An action of this nature on the part of the United States Government departments cannot, of course, aid the development of Soviet-American trade relations, since gold is the natural medium in adjusting unfavorable balances or seasonal fluctuations of one kind or another. . . . If the United States prefers that accounts between economic organizations of the Soviet Union and business firms of the United States, and also accounts with the Far East and South America be cleared by the State Bank through the mediation of other countries, especially by means of gold export to such countries, the result of this method of settling accounts, while undoubtedly advantageous to foreign banks, will hardly be in the interest of American firms."[25]

M. Scheinman further pointed out that gold of Soviet origin, "apart from serving as a reserve against note issue, is also an export commodity precisely in the same way that oil is for the Soviet Naphtha Syndicate, cotton cloth for the Soviet Textile Syndicate or furs for the corresponding Soviet industrial and trade organizations." In fact, at the present time, the Soviet Government is reported to be exporting practically the entire output of gold in Russia in order to redress the unfavorable balance of trade.

At the present time the Government of the United States considers that the title to gold exported from Russia is not clear. This objection to the import of Russian gold into the United States would probably disappear subsequent to recognition.[26]

CONCESSIONS

It may be asked what effect absence of recognition may have on the establishment of American concessions in Russia. On the ground that "resort to the methods and resources of developed capitalistic countries, particularly the United States, would hasten the rebuilding of destroyed industry and the more rapid utilization of Russia's undeveloped resources,"[27] the Soviet Government promulgated the decree of November 23, 1922, setting forth the conditions on which concessions were to be granted. The Soviet Government guaranteed that the property which a concessionaire would invest in an undertaking in Russia would not be subject to nationalization, confiscation or requisition. Concessions were offered in manufacturing, agriculture and mining. Foreign concerns and individuals were also invited to supply technical assistance to Russian undertakings. A decree of September 14, 1928 makes a number of additions to the list of enterprises offered to foreign concessionaires, and attempts to facilitate the operation of the concessions. Concessions will now be available in new fields, such as transport, the construction of machinery, the manufacture of automobiles and the erection and operation of public utilities

25. *Economicheskaya Zhizn* (Economic Life), Mar. 16, 1928. Translated in *Russian Gold* (a collection of articles, newspaper editorials and reports, and statistical data regarding the Russian gold reserve and shipments of Soviet gold), issued by the Amtorg Trading Corporation, New York, 1928, p. 35-36.

26. It may be noted that by Article IX of the Trade Agreement, March 16, 1921, the British Government (prior to recognition) pledged itself to take no measures to take possession of gold, money or goods not indentifiable as its property, exported from Russia in payment for imports. By the protocol of December 21, 1928, the German Government agreed to enter as soon as possible into negotiations with the Soviet Government regarding guarantees for the greater security of the property of each of them in the territory of the other. The question of guarantees was raised in connection with the Lepke case. In November 1928 the Soviet Government offered certain objects of art for sale in Berlin through the intermediary of the auctioneer Lepke. A number of Russian émigrés claimed that these articles had been confiscated by the Soviet Government and obtained an injunction against the sale in the Kammergericht. The injunction was raised by the Landgericht on appeal by the Soviet Government.

27. Fisher, A. "Foreign Concessions in Russia." *Soviet Russia in the Second Decade,* New York, The John Day Co., 1928, p. 341, 344.

(chiefly power plants). The concessionaires will be allowed to import materials duty free for the construction of their plants if the materials are not available in Russia. All capital required for plant establishment must come from abroad in the first instance, but thereafter the concessionaires will be permitted to utilize a part of their profits for further development. Permission to export foreign currency will be facilitated in the future, and the payment of taxes will be simplified, by making them payable in a lump sum.

At present ten American concessions are operating in Russia.[28] The concessionaires appear to be satisfied on the whole with the conditions under which the concessions are granted. The demands of local labor and the local authorities have caused concern on certain occasions. The possibility of interference by the government, the risk of confiscation, the problems raised by the granting of concessions which involve properties previously owned and developed by other foreign interests—these factors may be set to the debit side of an account, the credit side of which offers the advantages of freedom from private competition and the opportunity to engage in business in a protected market. According to a statement recently made by Mr. Charles H. Smith, Vice-President of the American-Russian Chamber of Commerce in Moscow, an increase in the number of American concessions in Russia will depend in the future on prompt action by the Soviet Government with regard to offers of American capital.[29]

28. Figures as of January 1929. The concessions are as follows: placer gold mining concession, granted to Mr. Vint for twenty years; asbestos concession, granted to the American Asbestos Company in 1921 for twenty years; agricultural concession, for farming in Northern Caucasus, granted in 1925 for fifteen years; manufacturing of pencils, pens and similar articles, granted to Mr. Hammer in 1925 for ten years; concessions for the manufacture of oxygen, acetylene and other gases, granted to the Russian-American Compressed Gas Company in 1926 for fifteen years; prospecting concession, granted to the New York corporation *Beloukha* in 1927 for two years. Technical assistance has been supplied in the iron and steel industry by the Freyn Engineering Company; in the coal industry by Stuart, James and Cooke, and the Allen & Garcia Company; and in the Dnieprostroy construction by the Hugh L. Cooper Company. The manganese concession obtained by the Georgian Manganese Company, Ltd., (W. A. Harriman & Company) in 1925 for twenty years has been dissolved. The dissolution of the concession contract is attributed by the Soviet Government to the inability or unwillingness of the concessionaire to invest the necessary capital. *Economic Survey*, published by the State Bank of the U. S. S. R., Nov. 7, 1928. By an agreement dated Aug. 21, 1928, the Soviet Government guaranteed the investments of Harriman & Company in the form of a 7% loan which is to be paid off in fifteen years. *New York Times*, Oct. 27, 1928.

29. *Izvestia*, Nov. 6, 1928.

THE SOVIET GOVERNMENT BEFORE THE AMERICAN COURTS

The status of the Soviet Government before, and the application of its acts and decrees by, the American courts in the abscence of recognition, have raised a number of problems in recent years. The conduct of foreign relations lies outside the province of the courts. In cases involving questions of foreign policy, the courts leave the determination of the facts to the political department, and accept its conclusions without further inquiry. In the specific matter of recognition, the courts request a statement from the political department as to whether a given government has or has not been recognized, and reach their decisions in the light of the answer furnished. The act of recognition is binding on the courts. When recognition has been withheld, the courts take judicial notice of that fact.[30] They do not attempt to determine for themselves the qualifications of a government *de facto* for recognition. The courts have taken judicial notice, as a fact, of the existence of governments *de facto*, without expressing any opinion as to recognition.[31]

THE SOVIET GOVERNMENT AS PLAINTIFF

The first problem which presents itself is whether the Soviet Government may be permitted to sue in American courts in the absence of recognition. In 1920 and 1921 the Soviet Government attempted to sue in the American courts as successor to the rights and interests of preceding Russian Governments.[32] The court took notice of the fact that the Department of State had not recognized the Soviet Government and had not received the agent who claimed to represent it. Russia, the State, said the court, continued to exist, with its rights and interests unimpaired. It was for the political

30. Mr. Foster to M. Perraza, Sept. 21, 1892, *For. Rels.*, 1892, p. 644; *Luther v. Sagor*, 3 K. B. (1921), p. 532; *The Annette and the Dora* (1919), P. 105, 35 T. L. R., p. 288; *Bourne v. Bourne*, 204 N. Y. Supp., p. 866 (1924); *James v. Second Russian Insurance Co.*, 239 N. Y., p. 248 (1924).

31. Cf. particularly *Russian Republic v. Cibrario*, 235 N. Y., p. 255 (1923); *Sokoloff v. National City Bank*, 239 N. Y., p. 158 (1924); *James v. Second Russian Insurance Co.* 239 N. Y., p. 248 (1924); *Russian Reinsurance Co. v. Stoddard*, 240 N. Y., p. 149 (1925); *Wulfsohn v. Russian Socialist Federated Soviet Republic*, 234 N. Y., p. 372 (1923).

32. *The Rogdai*, 278 Fed., p. 294 (1920); *The Penza*, 277 Fed., p. 91, (1921).

department, not for the courts, to determine who, if anyone, represented the Russian State in the United States at any given time.

Until June 30, 1922 the Government of the United States recognized M. Bakhmeteff, the accredited representative of the Provisional Government, as the representative of the Russian State. He was, in consequence, permitted to appear before the courts on behalf of the "Russian Government" in *Russian Government v. Lehigh Valley Railroad,* an action to recover damages for the loss of property owned by the former Imperial Russian Government.[33] In 1923, when action was still pending, the court was informed that the property of the Russian State had been placed in the custody of the Russian financial attaché, M. Serge Ughet, whose duties, according to the Department of State, had not been terminated by M. Bakhmeteff's withdrawal.[34] M. Ughet was admitted by the court as the representative, not of any particular government, but of the Russian State, "the real party in interest." The action was tried and judgment rendered in favor of the plaintiff. The Soviet Government through its counsel in New York, Mr. Recht, moved for the appointment of a receiver to preserve the assets representing the amount of the judgment, but this motion was denied. The Circuit Court of Appeals affirmed the judgment, and the Supreme Court of the United States denied review.[35] The Lehigh Valley Railroad paid the amount of the judgment, $984,104.62, into court, from which by orders of the court legal fees were paid and the balance was transferred through M. Ughet into the Treasury of the United States for application to American claims. The Soviet Government protested this action on the ground that Russia has unsatisfied counterclaims against the United States.

In *Russian Republic v. Cibrario*[36] the Soviet Government attempted to sue in the American courts for the breach of a contract to which it was itself a party. The Supreme Court of New York found that the Soviet Government had not been recognized by the United States, and held that, in the absence of recognition, it had no capacity to sue in the courts of New York. The Court of Appeals said that the right of a foreign State to sue in American courts rested, in the absence of a treaty, on international comity alone, and that in the absence of recognition comity did not exist. The court further said that, even if there was comity, public policy must always prevail over comity—that it would be contrary to public policy to permit an unrecognized government to recover funds which might be used against the interests of the United States.

It has been suggested that an unrecognized government should be permitted to appear as plaintiff in actions involving ordinary contractual claims, to the exclusion of all political claims.[37] The difficulty suggested by the *Cibrario* case would still have to be faced—namely, the disposal of the funds recovered by the unrecognized government as a result of action in the American courts. The property recovered, which might be viewed as the property of the Russian State, could be placed in custody or trust until such time as the government is recognized. This would avoid the difficulty created by the *Cibrario* decision, according to which a government *de facto* is without redress until recognized, and would not interfere with the political department's decision on this point.

There has as yet been no decision regarding the right of a corporation formed under Soviet law to sue in the American courts. The Soviet Government's monopoly of foreign trade and its far-reaching control of industrial enterprises in Russia might make it necessary to consider Russian corporations as instruments of that government. Should the *Cibrario* decision be followed, the right to sue would have to be denied in the absence of recognition.

33. 293 Fed. p. 133 (1919).

34. *Ibid.,* 293 Fed., p. 135 (1923).

35. 21 F. (2d), p. 396 and 275 U. S., p. 571.

36. 191 N. Y. Supp., p. 543 (1921); 235 N. Y. p. 255 (1923).

37. Borchard, E. M. "Can an Unrecognized Government Sue?" 31 *Yale Law Journal* (1922), p. 534; Fraenkel, O. K. "Juristic Status of Foreign States," 25 *Columbia Law Review,* p. 544, p. 569.

THE SOVIET GOVERNMENT AS DEFENDANT

The second problem which presents itself is whether the Soviet Government will be accorded immunity from suit in the absence of recognition. Numerous decisions of English and American courts have established the principle that friendly foreign governments and their property, including their merchant ships as well as warships, are immune from suit.[38] This immunity is derived from comity, which is itself based on considerations of courtesy and expediency.

In *Wulfsohn v. Russian Socialist Federated Soviet Republic*[39] action was brought against the Soviet Government to recover damages for the seizure in Siberia of a quantity of furs, the property of the plaintiffs. The Soviet Government pleaded immunity. The Supreme Court of New York found that, in the absence of recognition, no comity existed between the United States and the Soviet Government, and that, in the absence of comity, the Soviet Government was not entitled to immunity from suit. For the purpose of this action, however, the court held that the Soviet Government could be regarded as a foreign corporation, and could be sued in that capacity.

On appeal, the Court of Appeals came to the conclusion that a government *de facto* has exclusive jurisdiction over the territory it controls, and that acts committed by it within that territory cannot be questioned by our courts—not because of comity (which does not exist in the absence of recognition), but because the foreign government has not submitted of itself to our laws. The court said that to bring a foreign government *de facto* (as well as one *de jure*) before the courts "would 'vex the peace of nations'" and would bind the hands of the Department of State in the future. The court held that lack of recognition did not subject the Soviet Government to suit.

In *Nankivel v. Omsk All-Russian Government*[40] the Court of Appeals of New York held that a government *de facto* which had ceased to govern was not subject to suit here. The court said: "To sue a sovereign State is to insult it in a manner which it may treat with silent contempt. It is not forced to come into our courts and plead its immunity. It is liable to suit only when its consent is duly given."

The *Wulfsohn* decision may be said to strengthen the position of the Soviet Government for the time being.[41] The adjustment of private claims against the Soviet Government might conceivably be made one of the conditions of recognition.

It has already been pointed out that Soviet trade representatives are not usually accorded immunity from suit. The Soviet trade organizations in the United States are all incorporated under the laws of the State of New York, and may be sued like ordinary corporations.

ACTS AND DECREES OF THE SOVIET GOVERNMENT

The third problem which presents itself is whether the American courts will give effect to the acts and decrees of the Soviet Government in the absence of recognition. Under our legal system the law by which relationships in the State are governed is territorial in its extent: *i. e.*, its enforceability is coextensive with the territory of the State. Beyond the boundaries of this territory, the law of each State, made up of statutes, judicial decisions, etc., finds only such enforcement as will be given to it, as the result of comity, by the courts of other States, each with a system of law of its own.[42]

When legal rights or duties created under foreign law come before a court for adjudication, foreign law is applied, not *per se*, but because the law of the State in which the court sits enforces such rights and duties. Such enforcement occurs only if the court finds that it is not contrary to public policy or the interest of the State. No all-inclusive definition of public policy has ever been attempted. It is the function

38. *Berizzi Bros. Co. v. S. S. Pesaro*, 271 U. S., p. 572 (1926), and cases cited.

39. 118 Misc., p. 28 (1922); 202 App. Div., p. 421 (1922); 234 N. Y., p. 372 (1923); 235 N. Y., p. 579 (1923).

40. 237 N. Y. p. 150.

41. Compare Mr. Hughes, Secretary of State, to the Governor of New York, Oct. 12, 1923. *Oliver Trading Co. v. Mexico*, 264 U. S. (Records and Briefs), p. 12.

42. *Hilton v. Guyot*, 159 U. S., p. 113, 163 (1895); *Marshall v. Sherman*, 148 N. Y., p. 9, 24, (1895).

of the court to interpret public policy with reference to the acts and decrees of foreign governments.[43]

Soviet legislation during the formative years 1917-18 consisted of decrees, ordinances and instructions, and dealt with the most important phases of the transition from a capitalistic to a proletarian set of institutions. It included decrees on the nationalization of banks, insurance companies, specified industrial and commercial undertakings, the nationalization of the commercial fleet, and the abolition of the right of succession. According to Bolshevist theory, law is the product of the ruling class. The State has been formed to keep the oppressed classes in subjection, and law is the form given to the organization of oppression. Law and the State exist for the protection of class interests.[44] The purpose of Soviet law is to protect the interests of the class now ruling in Russia—the proletariat. The enjoyment of rights is assured to the proletariat collectively. Written law is preceded and, when formulated, is to be corrected by the proletarian "sense of right"—the proletariat's consciousness of its class interests.

JAMES V. SECOND RUSSIAN INSURANCE COMPANY

The American courts at first refused to give effect to the acts and decrees of the Soviet Government on the ground of non-recognition and consequent absence of comity. In *James v. Second Russian Insurance Company*[45] action was brought by a New York corporation, the assignee of a claim against the defendant, a corporation organized under the laws of Russia and doing business in New York, in favor of a British corporation, the Eagle and Star British Dominions Insurance Company, Limited. The defendant claimed that its liability had been extinguished by the decree of December 1, 1918, by which the Soviet Government had nationalized insurance companies in Russia, and that, if it had not been so extinguished, the Trade Agreement of 1921 between Great Britain and Russia had effectively taken over all claims of British citizens against Russian companies.

The decree in question provided for the nationalization of insurance companies of all kinds. Insurance was declared to be a monopoly of the State, and a commission was created for the liquidation of the insurance companies, and for the subsequent organization of insurance. Reorganization and liquidation were to be terminated by April 1, 1919.

The Supreme Court of New York examined the decree, and recognized that it had been effective in Russia.

> "It is true that the main company has been dissolved by the Soviet Government. But," it said, "these decrees we do not recognize, so that the question is presented as though this defendant were a branch of a Russian corporation authorized to do business within this State.[46]
>
> ". . . . If it be true that we do not recognize the dissolution of this corporation by the Soviet Government, the subject must be considered as though the parent corporation existed in Russia and was doing business through its branch insurance company in the United States."[47]

The court thus deliberately assumed the continued existence of the insurance company in Russia.

On re-hearing, the court set forth the grounds on which it denied validity to the decrees of the Soviet Government:

> "The various decrees of people's commissaries issued by the Soviet régime have been held to be of no force in this jurisdiction because of the non-recognition, by our federal authorities, who carry on our diplomatic intercourse, of the ruling body in Russia promulgating these decrees."[48]

The obvious contradiction between the actual effect achieved by the acts and decrees of the Soviet Government in Russia

43. *Russian Republic v. Cibrario*, 253 N. Y., p. 258-259, (1923).

44. The decree of Dec. 8, 1918, which provided for the establishment of the People's Court, stated (Article 22) that the court was to apply the decrees of the Government of Peasants and Workmen; in the absence of the appropriate decree or when the decree was found inadequate, it was to be guided by the Socialist sense of right. *Sbornik Dekretov* (Collection of Decrees), Vol. I, 1917-1918, No. 154.

45. 203 N. Y. Supp., p. 232, (1924).

46. *Ibid.*, p. 233.

47. *Ibid.* Cf. also *Murphy v. Second Russian Insurance Company*, 203 N. Y. Supp., p. 234, (1924).

48. 205 N. Y. Supp., p. 472, 473, (1924). Cf. also *Joint Stock Bank of Volgakama v. National City Bank of New York* (decree on the nationalization of industrial and commercial concerns), 206 N. Y. Supp., p. 476, (1924). *Russian Reinsurance Company v. Stoddard* (decree on the nationalization of insurance companies), 207 N. Y. Supp., p. 574, (1924).

(such as the dissolution of various corporations and the appropriation of their assets by the government), and the refusal of the American courts to give them any effect whatever, assumed practical importance in such matters as the adjustment of claims brought by and against the branches of Russian corporations in the United States. In coping with these problems, the American courts have modified their earlier rigid views, and have attempted to apply the criterion of public policy to the decrees of the Soviet Government.

SOKOLOFF V. NATIONAL CITY BANK OF NEW YORK

In *Sokoloff v. National City Bank of New York*[49] the plaintiff had paid the defendant in June 1917 a sum of money upon its promise to open an account in his favor in its Petrograd branch, and to repay him this sum in rubles at a specified rate, at such times and in such amounts as he, by written orders, might demand. The plaintiff alleged that the account was opened, and that, from time to time, he drew against it; but that in November 1917 and February 1918 checks for the balance were presented and dishonored. The defendant claimed that the nationalization of all private joint stock banks by the Soviet Government, and the consequent seizure of the plaintiff's deposit account, discharged it from liability.

Judge Cardozo, who delivered the opinion, suggested that the general principle of the invalidity of an unrecognized government's decrees was not inflexible; such decrees might possess "a validity quasi-governmental, if violence to fundamental principles of justice or to our own public policy might otherwise be done."[50] Turning to the particular case before him, he found that the defendant's liability had not been affected by the decree of nationalization and the seizure of its assets in Russia.

> "A government in Russia could not terminate its existence either by dissolution or by merger, for it was a corporation formed under our laws, and its corporate life continued until the law of its creation declared that it should end. What a Russian Government could do was to deprive it of the privilege of doing business upon Russian soil. But the ending of its Russian business was not the ending of its duty to make the restitution for benefits received without requital."[51]

The destruction of the Russian branch of an American corporation did not destroy the corporation itself. The liability of the corporation was not affected by the seizure of its property in Russia.

> "Plaintiff did not pay his money to the defendant and become the owner of this chose in action upon the security only of the Russian assets," but "of all its assets, here as well as elsewhere."[52]

This opinion was reaffirmed by the Court of Appeals in *James v. Second Russian Insurance Company*,[53] the facts of which have already been stated. Judge Cardozo, who again rendered the opinion, said:

> "The decree of the Russian Soviet Government has no effect in the United States unless to such extent as justice and public policy may require. . ."[54]
>
> "Our concern," he said, "is not so much with the consequences intended by the authors of the decree as with those that will be permitted in other jurisdictions where the intentions of its authors are without effect as law."[55]

The question was whether, in this particular case, justice and public policy required that effect be given to a Soviet decree. Judge Cardozo found that, far from suspending its activities, the plaintiff company, which claimed that its existence had been terminated by the Soviet decree, had since then written policies of insurance covering millions of dollars of risks, had collected premiums in large amounts, and was still doing business in the State of New York. Did justice and public policy require that the court should declare the existence of the company at an end?

> "When regard is had to these [justice and public policy] the answer is not doubtful. The defendant asks me to declare its death as a means to the nullification of its debts and the

49. 239 N. Y., p. 158, (1924).
50. *Ibid.*, p. 165, 166.
51. *Ibid.*, p. 167.
52. *Ibid.*, p. 167. This case was approved in *Sliosberg v. New York Life Insurance Company*, 217 N. Y. Supp., p. 226, (1926).
53. 239 N. Y., p. 248, (1924).
54. *Ibid.*, p. 255.
55. *Ibid.*, p. 255.

confiscation of its assets by the government of its domicile. Neither the public policy of the nation, nor any considerations of equity or justice exacts an exception in such conditions to the need of recognition. . . . Neither comity nor public policy requires us to enforce a mandate of confiscation at the behest of such a government to the prejudice of our own citizens or of those of any friendly power seeking justice in our courts."[56]

RUSSIAN REINSURANCE COMPANY V. STODDARD

In *Russian Reinsurance Company v. Stoddard*[57] the plaintiff, a branch of a Russian corporation, brought action to recover funds it had previously deposited with the Bankers' Trust Company for the protection of policy-holders and creditors in the United States. The defendant claimed that the plaintiff's existence had been terminated by the Soviet decree nationalizing insurance companies, and that, even if the plaintiff was still in existence, it had no capacity to sue. The last meeting of stockholders had been held in March 1917. The terms of the directors had expired, and they had not been re-elected. Only a few of the directors had been present at the meeting in Paris, at which the decision to terminate the trust and withdraw the funds had been reached. Since 1918 it had been impossible for the corporation to function according to the terms of its charter.

The Supreme Court of New York held that the Soviet Government was not recognized, that its decrees, therefore, had no validity in the United States and that the existence of the plaintiff company was not affected "by the alleged Soviet decrees." The case was appealed.[58] Judge Lehman, who rendered the opinion, followed Judge Cardozo in postponing decision on the general question of how far, if at all, the courts of this country may give effect to the decrees of governments *de facto*. He limited his decision to the particular case before him. He found that the decree on the nationalization of insurance companies had had the effect of terminating the life of these companies in Russia, and that, after recognition of the Soviet Government by other States, among them France, the decree had become effective in some of the recognizing States as well. He pointed out the possibility of conflict:

"For us the law of Russia, in its strict sense, may still be the law as it existed when the Czar ruled, for other nations the law of Russia rests upon a juridical conception not always in consonance with facts; in other nations recognition has brought judicial conceptions and facts into harmony. Do these juridical conceptions require us to hold that the law of Russia has remained unchanged since December 1917; that the Soviet Republic does not exist, and therefore cannot act; that the plaintiff corporation still lives and is domiciled in Russia, and is under the management of its former directors; though we know that its property in Russia has been sequestrated, its directors driven into exile, its business monopolized by an agency which enforces its decrees as if it were a government and is recognized as a government by most of the countries of Europe?. . . The very nature of the problem shows that general definitions must hamper rather than promote its solution. The facts in each case, the result of each possible decision determines whether that decision accords with common sense and justice. There can be no true precedent in the books where the facts are unprecedented. It remains for us to determine whether the result of the present judgment is contrary to common sense and justice."[59]

Judge Lehman analyzed the position of the insurance company.

"The plaintiff, if it exists at all, is an artificial entity, a creature of statute, an abstraction rather than an actuality. It is in fact without existence in Russia which has given it birth; it may be in law non-existent in the countries which have recognized the Soviet Republic. It exists here solely by force of the juridical conception which we have pointed out should not be carried beyond the limits of common sense and justice."[60]

If this company were permitted to recover in the United States, there would be no assurance that a second claim might not eventually be brought against the defendant by the Soviet Government, with the possibility of a second recovery, if not in the United States, at least in a third country which had recognized the Soviet Gov-

56. Judge Cardozo also came to the conclusion that the Trade Agreement of 1921 did not extinguish the claims of British subjects.

57. Supreme Court of New York, 207 N. Y. Supp., p. 574 (1924).

58. Court of Appeals, 240 N. Y., p. 149, (1925).

59. *Ibid.*, p. 162-163.

60. *Ibid.*, p. 164.

ernment. Or the corporate plaintiff might bring such a second claim and recover on it, on the ground that its directors, who acted without authority from the shareholders, were not authorized to demand the money from the defendant. This would work injustice to the defendant. It would be against justice and public policy, then, in this particular case, to deny validity to a decree of the Soviet Government.

> "To the extent that until that time [when the United States shall recognize the Soviet Government] the courts should not take jurisdiction of this equitable cause of action, both justice and common sense require us to give effect to the conditions existing in Russia, though those conditions are created by a force which we are not ready to acknowledge as a state or government."[61]

Until recognition takes place, or until such time as the corporation is able to re-establish its existence in Russia, the assets of the corporation should be kept intact. It will be the task of the State Department to see whether or not the Soviet Government is eventually permitted to assert a claim to these assets.[62]

The decision in *Russian Reinsurance Company v. Stoddard* is significant for several reasons. It departs farthest from the rigid rule that acts and decrees of unrecognized governments cannot be applied in the United States. It definitely accepts the criterion suggested by Judge Cardozo—whether or not public policy demands the application of the acts and decrees of such a government—thus eliminating the distinction which the lower courts had attempted to draw between recognized and unrecognized governments. It no longer relates the application of the acts and decrees of foreign governments to their recognition. It deals with facts alone, and drops all fiction regarding the effectiveness of the decrees of the Soviet Government in Russia, and the results which must follow abroad. Finally, it suggests a method of dealing with the property of defunct corporations during the period of non-recognition. The solution it offers cannot be criticized from the point of view that it strengthens the position of the Soviet Government, since that government would not be permitted to recover the assets of such corporations in the United States during the period of non-recognition. As Judge Lehman points out, it is for the Department of State to determine, at the time when it accords recognition, whether or not it will then permit the Soviet Government to recover these assets. The adjustment, when it comes, will have to be made through diplomatic channels, and possibly by means of arbitration of the claims of the two governments.[63]

The courts of Great Britain, France, Germany and Italy, when examining the decrees of the Soviet Government subsequent to recognition, have likewise taken public policy (or public order) into consideration. On the assumption that the Trade Agreement of 1921 constituted recognition of the Soviet Government, the English courts at first gave effect to the nationalization decrees of the Soviet Government,[64] and did not attempt to limit the application of Soviet legislation by considerations of public policy.

> "Even if it were open to the courts of this country to consider the morality or justice of the decree of June 1918, I do not see how the courts could treat this particular decree otherwise than as the expression by the *de facto* government of a civilized country of a policy which it considered to be in the best interests of that country. It must be quite immaterial for present purposes that the same views are not entertained by the government of this country, are repudiated by the vast majority of its citizens and are not recognized by our laws."[65]

After recognition had been accorded, however, the English courts showed considerable cautiousness in applying the Soviet decrees on the nationalization of banks. In *Banque Internationale de Com-*

61. *Ibid.*, p. 169.

62. *Ibid.*, p. 169. *Severnoe Securities Corporation v. Westminster Bank*, 214 App. Div., p. 14, (1924); 210 N. Y., p. 629 (1925), is in accordance with this case. Cf. also *Matter of Salamandra Insurance Co. v. Stoddard*, 209 App. Div., p. 871, (1924), and the dissenting opinion in *First Russian Insurance Co. v. Beha*, 240 N. Y., p. 601, 643, (1925).

63. It may be noted that in *Matter of Russian Insurance Company of Petrograd*, 223 App. Div., p. 378, (1928), Justice Martin said: "Until the State Department has settled the question of recognition (of the Soviet Government), it is not likely they [the funds of the insurance company] will be paid to a government that has already confiscated millions of dollars belonging to American creditors."

64. *Luther v. Sagor*, (1921), 3 K. B., p. 532; *Sea Insurance Company v. Rossia Insurance Company*, 17 Lloyds' List Law Reports (1923), p. 316.

65. *Luther v. Sagor*, (1921),3 K. B., p. 546.

merce de Petrograd v. Goukassow[66] and *Russian Commercial and Industrial Bank v. Comptoir d'Escompte de Mulhouse*,[67] the House of Lords viewed these decrees as declarations of policy rather than legislative measures. It held that the decrees in question had not had the effect of terminating the life of the banks, and that the branches in Great Britain were still in existence, although at that time in the hands of a receiver and in process of liquidation. The English banking cases were approved and followed in a decision of the Kammergericht in Prussia, March 3, 1925 (subsequent to recognition); the Soviet decrees on the nationalization of banks were held to be political measures only, and to possess no legislative force.[68]

The French courts have given effect to the Soviet decrees on the nationalization of banks[69] and of insurance companies.[70] They refused, however, to apply the Soviet decree on the nationalization of the commercial fleet. The Soviet Government, appearing as plaintiff, was not permitted to take over, on behalf of the Russian State, certain ships of the former Russian commercial fleet then lying in French ports, which ships the Soviet Government claimed came within the provisions of the nationalization decree.[71] The Commercial Tribunal of Marseilles held that it would be contrary to public policy to permit such recovery. Recognition, it said, meant the acceptance of diplomatic relations with the government recognized, but not the incorporation of the laws and customs of the country directed by that government into the laws applied by the French courts.

The Tribunal of Rome likewise refused to apply the decree on the nationalization of the commercial fleet, on the ground that it was contrary to the public order of Italy.[72]

It may be seen that the courts of States which have recognized the Soviet Government have limited the application of Soviet decrees either by interpreting them as falling short of legislative measures, or by declaring them contrary to public policy or public order. The results of their decisions do not differ radically from those of American courts.

TREATIES AND RECOGNITION

The application of Soviet decrees by American courts under certain circumstances has not been held to constitute recognition. Recognition is a political, not a judicial act. It may now be asked whether certain political acts, such as the negotiation and conclusion of treaties with an unrecognized government may be viewed as acts of recognition.

It is a matter of common knowledge that the act of recognition, whatever form it may take, in no way affects the existence of a new government. The existence of a government *de facto* is admitted prior to recognition. To these admitted facts recognition, when accorded, gives a juridical status. The capacity of a government to act juridically on behalf of the State it controls is acknowledged by the act of entering into treaty engagements with it. Does this act, however, constitute recognition?

The western States, prior to recognition, concluded trade agreements[73] and agreements for the exchange of war prisoners[74] with the Soviet Government. The British Government claimed that the trade agreement had no political significance, and constituted merely "recognition *de facto*."[75]

66. (1925), A. C. 112, 40 T. L. R. (1925), p. 837.

67. *Ibid.*

68. *Juristische Wochenschrift* (1925), Heft 11, p. 1300.

69. *Banque Générale de Commerce v. Jaudon ès qual ad.*, Tribunal of the Seine, Dec. 23, 1924, 52 Clunet (1925), p. 419. Cf. also *Crédit National d'Anvers v. Crédit Lyonnais*, 21 Rev. de Droit International Privé (1926) No. 1, p. 30.

70. *André v. La Union et le Phenix Espagnol*, Court of Aix, Dec. 23, 1925. 53 Clunet (1926), p. 126.

71. *Etat Russe v. Cie Russe de Navigation à Vapeur et de Commerce (Ropit)*, Commercial Tribunal of Marseilles, 52 Clunet (1925), p. 391, and Court of Aix, 1925, 53 Clunet (1926), p. 667.

72. *Nomis de Pollone et Svarono Fatis v. Cooperativa Garibaldi Federazione Italiana Lavoratori del Mare*, Feb. 8, 1924, 52 Clunet (1925), p. 225.

73. Great Britain, Mar. 16, 1921; Italy (preliminary agreement), Dec. 20, 1921; Germany, May 6, 1921; Austria, Dec. 7, 1921; Norway (preliminary agreement), Sept. 2, 1921; Denmark, Apr. 23, 1923; Czechoslovakia (preliminary agreement), June 5, 1923.

74. Great Britain, Feb. 12, 1920; Hungary, May 21, 1920; Italy, Apr. 27, 1920; France, Apr. 20, 1920; Austria, July 5, 1920; Denmark, Dec. 18, 1919 (interned civilians); Germany, May 6, 1921.

75. Lloyd George, *Parl. Debates*, House of Commons, Vol. 139 (1921), p. 2506.

The English courts, however, made no attempt to distinguish between "recognition *de facto*" and recognition (*de jure*). In *Luther v. Sagor* the court held that the trade agreement constituted recognition of the Soviet Government, in spite of the fact that it had before it a letter from the Foreign Office, dated April 20, 1921, which stated that "His Majesty's Government recognize the Soviet Government as the *de facto* Government of Russia."[76] The governments of the other western States likewise viewed the trade agreements as falling short of recognition, and accorded recognition at a later date. The Czechoslovakian agreement expressly provided that its conclusion in no way prejudged eventual decision on the question of recognition.[77]

The capacity of the Soviet Government to represent the Russian State officially at international conferences was admitted at both Genoa and The Hague in 1922. The Soviet Government was permitted to sign one international convention prior to recognition—the Lausanne convention of July 24, 1923, for ensuring the freedom of transit and navigation of the Straits.[78] No statement was made at that time as to the effect of the conclusion of this convention on the recognition of the Soviet Government. The other contracting parties, it would appear, tacitly assumed that it did not constitute recognition.

The United States has ratified the Universal Postal Convention which it signed at Stockholm on August 28, 1924[79] and to which the Union of Soviet Socialist Republics is a party. No reservations were made by the United States. When signing the International Sanitary Convention, June 21, 1926, however, the United States entered the following declaration in the protocol of signature:

> "The plenipotentiaries of the United States of America formally declare that their signing the International Sanitary Convention of this date is not to be construed to mean that the United States of America recognizes a régime or entity acting as government of a signatory or adhering Power when that régime or entity is not recognized by the United States as the government of that Power. They further declare that the participation of the United States of America in the International Sanitary Convention of this date does not involve any contractual obligation on the part of the United States to a signatory or adhering Power represented by a régime or entity which the United States does not recognize as representing the government of that Power until it is represented by a government recognized by the United States."[80]

The ratification, deposited in Paris on May 22, 1928, was accompanied by a reservation couched in similar terms.

Will the American Government tacitly assume that the adherence of the Soviet Government to the Anti-War Pact does not constitute recognition of that government by the United States? Or will it make an express statement to that effect at the time of the promulgation of the pact, as was suggested by Mr. Kellogg in December 1928? For the former course, the American Government may find precedents in the practice of other States, and in its own action with regard to the Universal Postal Convention. For the latter course it may find an analogy in its action with regard to the International Sanitary Convention. It may, of course, be argued that the Anti-War Pact differs from the latter convention in that it is a declaration of policy on the part of the signatory and adhering States, and creates no engagements between them. Such an argument may be inferred from Mr. Kellogg's statement as to the effect of a treaty containing mutual obligations:

> "A bilateral treaty containing mutual obligations to perform certain governmental acts is generally conceded by us to be in the nature of at least a *de facto* recognition, especially when we announce it as we did in the case of China. . . ."[81]

In any case, whatever may be the interpretation which the Soviet Government may

76. (1921), 3 K. B., p. 532, 543.

77. Czechoslovakia has not recognized the Soviet Government to date. Its representative in Moscow is listed in the Diplomatic Year Book of the People's Commissariat for Foreign Affairs under the section (which he alone occupies) of representatives of governments which have accorded "recognition *de facto*."

78. *League of Nations Treaty Series*, XXVIII (1923), p. 16. Turkey alone of the other signatory powers had recognized the Soviet Government (Treaty of March 16, 1921).

79. 44 *United States Statutes*, p. 2221.

80. *United States Treaty Series*, No. 762.

81. Testimony before the Senate Committee on Foreign Relations, *United States Daily*, Dec. 31, 1928, p. 9.

place on its adherence to a multilateral treaty to which the United States is a party, the final word rests with the government which accords recognition. The act of recognition, which is a matter of intent, while creating juridical norms, is itself determined by considerations of expediency. It may be found expedient at one time to give the title "recognition" to an act which, at another time, may be claimed to possess no significance whatever.

CONCLUSIONS

It may be seen, from the foregoing analysis, that the Government of the United States at the present time bases its objections to the recognition of the Soviet Government on three grounds: (1) the Soviet Government's connection with the Communist International, and its alleged participation in the propaganda conducted by the latter organization; (2) the Soviet Government's failure to repay or acknowledge the debts of preceding governments; and (3) its failure to restore the confiscated property of American citizens. The United States has declared that it feels no concern lest propaganda should bring about the overthrow of our government and institutions. Nevertheless, it demands that the Soviet Government should give evidence of its compliance with the accepted practice of international relations irrespective of the theories it may hold regarding the future organization of society. In fact, as long as the international community remains divided along national and not along class lines, relations between national groups (more or less homogeneously organized into States), may be expected to take precedence over international relations between classes, such as the proletariat. Likewise, as long as international trade remains based on a system of credits, the necessity of maintaining the greatest possible degree of economic security may justify the demand that governments, whatever their origins or methods, should possess capacity and willingness to perform international obligations.

The Soviet Government has denied any connection with the Communist International; this connection, however, has been admitted by the leaders of the Communist International and of the Russian Communist party. The Soviet Government has claimed that negotiations between the two countries would easily dispose of American claims regarding debts and confiscated property. It has expressed the opinion that recognition, and the resulting establishment of official relations, would prove of great benefit to Russo-American trade; specifically, it expects that recognition would permit it to float loans in the United States and would facilitate long-term credits.

It is, of course, impossible to predict the effect which recognition might have on commercial relations between the two countries. It must be noted, however, that in the absence of recognition, trade and communication are taking place at an increasing rate. A number of American business men have shown their confidence in the Soviet Government by extending long-term credits to it for the purchase of goods in the United States, and by acquiring concessions in Russia. The American courts have not permitted the Soviet Government to appear as plaintiff; they have, however, accorded it immunity from suit, and have recently adopted the practice of applying Soviet acts and decrees whenever failure to do so would prove contrary to justice or public policy.

The Soviet Government's control of industry and agriculture in Russia and its monopoly of foreign trade place that government in a position to guide trade in the direction considered most beneficial for the country as a whole. The real question at issue is whether the Soviet Government may not eventually find it expedient, other things being equal, to divert its trade to States by which it has been recognized and with which it has established official relations.

APPENDIX

Leading cases in which the position of the Soviet Government and its acts and decrees, before and after recognition, have been examined by foreign courts. In addition, several cases dealing with de facto *governments in Russia have been cited.*

Agency of Canadian Car and Foundry Co. v. American Can Co., 258 Fed. 363 (1919).

Akhmatoff v. Consul de Russie, 51 Clunet (1924) 157.

Aksionairnoye Obschestvo dlia Mechanicheskoyi Obrabotky Diereva A. M. Luther v. Sagor & Co. (1921) 1 K.B. 456; (1921) 3 K.B. 532.

Annette and Dora, The (1919) P. 105; 35 T.L.R. 288.

Avtchinnikoff v. Donnette, 53 Clunet (1926) 418.

Banque Générale de Commerce v. Jaudon, 52 Clunet (1925) 419.

Banque Internationale de Commerce v. Hausner, Receuil Officiel (Switzerland), Vol. 50, II, 507.

Bouniatian v. Société Optorg, Gazette du Palais, 1924, Ier Semestre, 96.

Bourne v. Bourne, 204 N. Y. Supp. 866 (1924); 209 App. Div. 419 (1924); 240 N. Y. 268 (1925)

Compagnie d'Assurance Nord de Moscou v. La Union et le Phoenix Espagnol, 53 Clunet (1926) 126.

Crédit d'Anvers v. Crédit Lyonnais, 21 *Revue de Droit International Privé* (1926), No. 1, 3.

Etat Russe v. Compagnie Russe de Navigation à Vapeur et de Commerce (Ropit), 52 Clunet (1925) 391; 53 Clunet (1926), 667.

Federazione Italiane Consorzi Agrari di Piacenza v. Commissariato per il Commercio Estero della Republicca Socialista dei Soviets de Russia, Monitore dei Tribunali, 1923, 569.

First Russian Insurance Co. v. Beha, 240 N. Y. 601 (1925).

Gagara, The. (1919) P. 95; 35 T.L.R. 243.

George and Edwich, S.S., 50 Clunet (1923) 663.

Gross v. Gretchenko et al., Gazette des tribunaux mixtes d'Egypte, XIV (1924), 234, Sec. 365.

Hamaravy v. Crédit Lyonnais, 52 Clunet (1925) 475.

James v. Second Russian Insurance Co. 203 N. Y. Supp. 232 (1924); 205 N. Y. Supp. 472 (1924); 239 N. Y. 248 (1924).

Joint Stock Co. of Volgakama v. National City Bank of New York, 206 N. Y. Supp. 476 (1924); 240 N. Y. 368 (1925).

Katsikis v. Societa Fati Svaroni di Pallone, S.S. Soglasie, 50 Clunet (1923) 1021.

Lepschkine v. Grossweiler et Cie., Receuil Officiel (Switzerland), Vol. 49, I, 188.

Matter of Russian Insurance Co. of Petrograd, 233 App. Div. 378 (1928).

Matter of Salamandra Insurance Co. v. Stoddard, 209 App. Div. 871 (1924).

Mkeidze v. Banque Russo-Asiatique (Succursale de Paris). 52 Clunet (1925) 384.

Moscow Machine, Tool and Engine Co. v. Richard and Co., 240 N. Y. 707 (1925).

Nankivel v. Omsk All-Russian Government, 237 N. Y. 150 (1923).

Nomis de Pollone et Svarono Fatis v. Cooperative Garibaldi Federazione Italiana Lavoratori del Mare, 52 Clunet (1925) 225.

Penza, The. 277 Fed. 91 (1921).

Rogdai, The. 278 Fed. 294 (1920).

Russian Commercial and Industrial Bank v. Comptoir d'Escompte de Mulhouse, (1925) A. C. 112, 40 T.L.R. 837 (1925).

Russian Government v. Lehigh Valley R. R. 293 Fed. 133 (1919) and 135 (1923).

Russian Reinsurance Company v. Stoddard, 207 N. Y. Supp. 574 (1925); 240 N. Y. 149 (1925).

Russian Republic v. Cibrario, 191 N. Y. Supp. 543 (1921); 235 N. Y. 255 (1923).

Sea Insurance Co. v. Rossia Insurance Co., 17 Lloyds' Law List Reports (1923) 316.

Sedgwick Collins and Co. v. Rossia Insurance Co. (1926) 1 K.B. 1.

Severnoe Securities Corporation v. Westminster Bank, 214 App. Div. 14 (1925); 210 N. Y. 629 (1925).

Sliosberg v. New York Life Insurance Co. 217 N. Y. Supp. 226 (1926).

Sokoloff v. National City Bank of New York, 239 N. Y. 158 (1924).

Société des Usines Renault v. Société Rousski Renault, 52 Clunet (1926) 383; 53 Clunet (1926) 671.

Société Féroune, 51 Clunet (1924) 139.

Vlasto v. Banque Russo-Asiatique, 50 Clunet (1923) 933.

White, Child and Beney Ltd. v. Simmons, (1922) 127 L.T.R. 571.

Wulfsohn v. Russian Socialist Federated Soviet Republic, 118 Misc. (N. Y.) 28 (1922); 202 App. Div. 421 (1922); 234 N. Y. 372 (1923); 235 N. Y. 579 (1923).

Wulfsohn v. Russo-Asiatic Bank, 11 Fed. (2nd) 715 (1926).

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